IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26/03/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice V. KANAGARAJ

H.C.P. No.2156 OF 2002

Dhana Singh ..... Petitioner

-Vs-

1. State of Tamil Nadu
represented by the
Secretary to Government
Prohibition and Excise Department
Chennai 9

2. District Collector and
District Magistrate
Kancheepuram District
Kancheepuram ..... Respondents

Petition under Art.226 of the Constitution of India, praying
for a Writ of Habeas Corpus as stated in the petition

For Petitioner :: Mr. Swamidoss Manoharan

For Respondents :: Mr. A. Navaneethakrishnan
Addl. Public Prosecutor
:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)
The writ petition is filed by one Dana Singh, challenging the
order dated 16-8-2002 passed by District Collector and District Magistrate,
Kancheepuram District, Kancheepuram, branding one Mahesh as goonda and
directing his detention under Sec.3 of the Tamil Nadu Prevention of Dangerous
Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral
Traffic Offenders and Slum Grabbers Act, 1982 (in short Act 14 of 1982).

2. Two adverse cases are shown against the detenu while the
ground case is based on an incident dated 27-5-2002, which pertained to the
murder of one Kutty, husband of Tmt. Mangalam Kutty. The said Mangalam Kutty
was the President of the Melamaiyur village panchayat at the relevant time.
In the reasons it is suggested that detenu belonged to the group of one
Kanitha Sampath, sitting Member of Legislative Assembly from Thirupporur

Assembly constituency and the wife of the deceased Kutty had political rivalry with Kanitha Sampath and this has resulted into the murder of Kutty at the hands of the henchmen of the said Kanitha Sampath. As many as six persons have been shown to be arrested on account of the allegation that they assaulted Kutty with aruval and knives and caused him injuries resulting in his death on the spot. The detaining authority has also relied on the fact that Mangalam Kutty had lodged a number of complaints to the concerned police station because of the threatening calls and threatening letters directed at her by the henchmen of her political rival. It is also pointed out that Mangalam Kutty was elected as the President of the said village panchayat union, defeating the sitting M.L.A., Kanitha Sampath. The detaining authority had come to the conclusion that this murder of the husband of the village panchayat has resulted in the disturbance to the maintenance of public order.

3. Learned counsel for the petitioner, Mr. Swamidoss Manoharan firstly pointed out that pages 71, 101, 103, 171, 185, 283, 285 and 49 were illegible and, therefore, the detenu found it difficult to read the same. He, therefore, had sought legible copy of these pages. He further points out that 235, 239, 241, 329, 61, 63, 65 and 53 were entirely in English and since the detenu did not understand English, he had sought the Tamil translation of these pages. Learned counsel suggested that though these pages have been given, the Tamil translation of pages 329 and 331 are not there in the booklet. He, therefore, suggests that this amounts to the denial of opportunity to make a proper and effective representation against his detention.

4. We have seen those pages. They pertained to the post-mortem report, which is in English. There is no doubt that the translation of this post-mortem report, which graphically describes the injuries on the person of the deceased Kutty has not been supplied. However, the matters will not stand concluded thereby. It is trite law now crystallised by the decision of the Supreme Court in PAUNAMMAL v. STATE OF TAMIL NADU (1999 SCC Crl. 231) that it is only the denial on the part of the State to supply the copies of or translation of the "relied upon" documents, it would clinch the issue in favour of the detenu. The Apex Court has clarified therein that if the detenu asks for only the "referred to" documents, the non-supply thereof would not result in vitiating the detention. We have seen the grounds very closely but, we do not find that this post-mortem report was in any manner relied upon by the detaining authority. At the most it is a "referred" document. In that view, the contention of the learned counsel for the petitioner that prejudice was caused to the detenu on account of non-supply can also not be accepted because the learned counsel has not been able to show us any "prejudice caused" on account of the nonsupply. Keeping in mind, the principles laid down by the Apex Court in Paunammal case, cited supra, it will have to be held that the contention raised does not deserve acceptance.

5. Learned counsel then argued that there was nothing to

suggest that this singular incident of murder had resulted in disturbance of public order. Learned counsel contended that it could at the most be held to be prejudicial to the maintenance of law and order situation in the village. The argument was that this was a small hamlet wherein such murder by itself cannot cause the repulse so as to disturb the public order. We were extensively taken through the reported judgment of the Supreme Court in PIYUSH KANTIVAL MEHTA v. COMMISSIONER OF POLICE, AHMEDABAD CITY AND ANOTHER (AIR 1989 SC 491) and more particularly the observations made in paragraphs 12, 16 and 17 thereof. There can be no dispute about the law laid down by the Apex Court. However, it cannot be said that the incident of a murder of husband of the President of the Village Panchayat was of such a potency so as not to disturb the public order in the otherwise calm and quiet hamlet. We cannot forget that in the grounds the pre-existing enmity between Mangalam Kutty and Kanitha Sampath is referred to and relied upon. The murder was as a result of political rivalry between Mangalam Kutty and Kanitha Sampath. The detaining authority has also used the earlier complaints made by Mangalam Kutty asking for the protection. He has also referred to the threatening calls and threatening letters handed out by the group of the said Kanitha Sampath. Under such circumstances, it cannot be said that a gruesome murder of the husband of President of the village panchayat will not cause ripples in the public order of that hamlet. After all, if Melamaiyur had a village panchayat, it cannot be strictly said to be a sleepy hamlet. We have seen even the sketch drawn by the Investigating Officer where this gruesome murder took place though at night at 10 o clock. It is in the vicinity of a few houses. If the incident has taken place on the backdrop of the fierce political rivalry and of such a person like husband of the President of the village panchayat, it cannot be said that the public order of that area was not likely to be disturbed.

6. Learned counsel then pointed out that this was a singular incident and, therefore, it could not be said that it would disturb the public order. In the recent decision in DARBAN KUMAR SHARMA v. STATE OF TAMIL NADU (J.T. 2003 (1) SC 176), the Apex Court went into this question and observed that a solitary assault on one individual could not be said to disturb the public peace or place the public order in jeopardy. In paragraph 6, the Supreme Court took note of the allegations made against the detenu in that case, which was of his robing a person called Kumar in a public place. It, therefore, came to the conclusion and recorded a finding that there was no material on record to show that the reach and the potentiality of the solitary incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. The Supreme Court later on went on to quash the detention on the ground that in the circumstances of that case, it could not be said that the act of the detenu was sufficient to cause a disturbance to the public order. However, the observations quoted above provide a clue for deciding as to whether a particular act could be held to be sufficient to disturb the public order. Though in the aforesaid decision, there were no such facts available, in our opinion, the material is available in the present case. It cannot be

forgotten that there was a backdrop of a long standing rivalry in between two groups one headed by the wife of the deceased and another by the sitting Member of the Legislative Assembly. The wife of the deceased has been constantly complaining and seeking protection of the police on the ground that she was being given threatening calls and threatening letters. It cannot also be forgotten that the person, who lost the life was the husband of President of village panchayat. In our opinion, the consideration of this material to be sufficient to cause the disturbance of the public order cannot be said to be the erroneous on the part of the detaining authority. When we see the grounds closely, this common thread of long political rivalry and the fierce result thereof a murder of the husband of the President of the village panchayat have been taken into consideration by the detaining authority. We cannot, therefore, persuade ourselves to accept the contention that this was merely a disturbance to the law and order rather than public order.

7. Learned counsel tried to urge that the accident had taken place at night and there was nothing to suggest that it took place in presence of the villagers. In fact, the bail application was rejected by the Sessions Judge on the ground that there was enough evidence available to suggest that the detenu had taken part in committing the overt act against the said Kutty. It cannot, therefore, be said that the act on the part of the detenu in committing the assault with deadly weapons and thereby committing the murder of Kutty, husband of the President of the village panchayat, can be dubbed only as disturbing the law and order and not the public order. The contention, therefore, must be rejected.

8. Lastly, Mr. Swamidoss Manoharan, argued that the detenu had sought the copy of the affidavit sworn by the sponsoring authority by which he placed the copy of the order dated 16-8-2002 before the detaining authority. The argument is duel. Firstly, it is contended that such copy came to be surreptitiously pasted in the documents which have been supplied; alternatively, the argument is that if the copy of the order dated 16-8-2002 was actually supplied to the detaining authority then, necessarily it had to be supplied only by way of an additional affidavit because all the other papers must have already been supplied to the detaining authority.

9. In the first place, there is nothing on record to suggest that any additional affidavit was sworn and supplied to the detaining authority by the sponsoring authority. The argument of the learned counsel is based on the presumption that all the documents and the affidavit came to be supplied earlier to 16-8-2002 and on that basis the order of detention was passed on 16-8-2002. It cannot be forgotten that the bail application came to be rejected by order dated 14-8-2002 and the copy thereof was made available to the sponsoring authority only on 16-8-2002. Under such circumstances, the copy could have been supplied to the detaining authority even on 16-8-2002 and before the detention order was passed. Therefore, this question also pales into insignificance. Learned counsel, however, says that the said affidavit was not supplied. In our opinion that there was such an affidavit is itself not established and, therefore, there will be no question of any prejudice being caused to the detenu because of the nonsupply of the alleged additional affidavit.

10. Lastly, learned counsel relied on the question of delay in consideration of the representation. The first representation, dated 13 -9-2002, made by the detenu was received by the Government through the Advisory Board and it came to be rejected by the Government on 27-9-2002. This representation was received by the Government on 16 -9-2002. It immediately called the parawise remarks on 17-9-2002, which was received by the Government only on 24-9-2002. Thereafter, the file was placed before the Under Secretary and the Deputy Secretary on 25-9-2002 and 26-9-2002 respectively. It is to be remembered that 21-9-2002 and 22-9-2002 were holidays. Therefore, there was no question of any delay here. Ultimately, the Hon□ble Minister dealt with the representation and rejected it on 27-9-2002. If the file was put before the Hon□ble Minister on 26-9-2002 and was disposed of on 27 -9-2002, there was no question of any delay.

11. Learned counsel, however, points out that one more detailed representation was made by the detenu on 30th September, 2002 and that was not properly considered in time. Learned Additional Public Prosecutor drew our attention at the counter wherein the time-table is given. This representation was received by the Government on 4-10-2 002. Parawise remarks were called from the detaining authority on 7-10-2002. 5th and 6th October were holidays being Saturday and Sunday. The remarks were received back by the Government on 28-10-2002. The matter was considered by the Under Secretary and Deputy Secretary on 30-10-2002 and 31-10-2002 respectively, while it was kept before the Hon□ble Minister on 2-11-2002 and it was rejected on 6-11-20 02.

12. Learned counsel takes exception to the period between 7-10-200 2 and 28-10-2002 and secondly between 2-11-2002 and 6-11-2002. In so far as the first spell is concerned, it is pointed out by the learned Additional Public Prosecutor that 5th, 6th, 12th to 15th, 19 th, 20th, 26th and 27th of October and 2nd to 4th of November, 2002 were holidays. Learned Additional Public Prosecutor argues that some time would be required because the Government had to call the parawise remarks from the detaining authority, viz. District Collector and District Magistrate, Kancheepuram who had to further call the remarks of the sponsoring authority and after receipt of those remarks had to despatch the same to the Government. If, in the whole process, as many as ten to twelve days were holidays, there would be no question of any delay. Learned counsel also pointed out that some time would be required in the post-office also. Therefore, the explanation is reasonable and we are of the clear opinion that there is no delay in consideration of the second representation also.

In short, we are of the clear view that the petition has no merits and must be rejected. It is accordingly dismissed.

Index:Yes
Website:Yes

Jai

To:

1. State of Tamil Nadu
represented by the
Secretary to Government
Prohibition and Excise Department
Chennai 9

2. District Collector and
District Magistrate
Kancheepuram District
Kancheepuram